

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760

WILLKIE FARR & GALLAGHER LLP
Mark T. Stancil (admitted *pro hac vice*)
Joshua S. Levy (admitted *pro hac vice*)
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000
mstancil@willkie.com
jlevy@willkie.com

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

REED SMITH LLP
Omar J. Alaniz
Texas Bar No. 24040402
Lindsey L. Robin
Texas Bar No. 24091422
2850 N. Harwood St., Ste. 1500
Dallas, Texas 75201
(469) 680-4292

*Counsel for Highland Capital Management, L.P., Counsel for James P. Seery, Jr.
and the Highland Claimant Trust*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

)
) Chapter 11
)
) Case No. 19-34054-sgj11
)
)
)
)

**HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLAIMANT TRUST, AND
JAMES P. SEERY, JR.'S RESPONSE TO HUNTER MOUNTAIN INVESTMENT
TRUST'S REQUEST FOR ORAL ARGUMENT OR, ALTERNATIVELY,
A SCHEDULE FOR EVIDENTIARY PROFFER**

¹ Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

The Highland Parties respond to HMIT's Request for Oral Hearing or, Alternatively, a Schedule for Evidentiary Proffer ("Request"; Dkt. No. 3845) as follows:²

1. In response to HMIT's request for oral argument on the Motion, the Highland Parties are available at this Court's convenience if this Court determines that oral argument would be helpful. In the event this Court holds such argument, however, the Highland Parties respectfully request that it be held remotely to minimize further expense due to HMIT's belated attempt to introduce expert testimony.

2. The Highland Parties oppose HMIT's request "to present both Mr. Pully and Mr. Van Meter for an oral hearing to establish their qualifications . . . as well as the relevance and reliability of their opinions and methodologies." (Request ¶ 3.) At the Hearing, this Court held that HMIT cannot buttress its showing regarding the Purported Experts' admissibility. Indeed, counsel for the Highland Parties raised this issue explicitly: "We would ask that Your Honor's ruling on the ultimate admissibility of this be limited to what they've actually put in front of us. . . . So we would just ask that they live or die with what they've said in the way of methodology, disclosures, and the like." (Hr'g Tr. at 22:21–23:3.) This Court ultimately agreed, making clear that it would "go back and read the motion, the response, and make my ruling on are we coming back for another day of experts." (*Id.* at 24:20–25:12.) This Court specifically addressed the Highland Parties' request to preclude HMIT from attempting to buttress its showing regarding the admissibility of the Purported Experts: "And with regard to the comment about not adding to, I think that's a fair point. You can't add new exhibits that the expert might talk about or that you might want me to consider between now and whenever the tentative day two is." (*Id.*) HMIT expressly acknowledged and consented to that limitation: "Understand. We agree with that." (*Id.* at 25:13.)

² Capitalized terms have the same meaning as in the Motion (Dkt. No. 3820) unless otherwise indicated.

3. Yet HMIT now contends that it is entitled to another hearing—after this Court has already held two conferences and a full-day evidentiary Hearing—at which it would present the very same sort of evidence this Court expressly held would not be considered. Tellingly, HMIT cites no authority for its purported entitlement, much less authority that could overcome HMIT’s concession in open court. The fate of HMIT’s expert-witness ambush should, as this Court and all parties agreed at the hearing, rise or fall on what HMIT has already filed.

Dated: June 13, 2023

PACHULSKI STANG ZIEHL & JONES LLP

/s/ John A. Morris

Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.,
and the Highland Claimant Trust*

WILLKIE FARR & GALLAGHER LLP

/s/ Mark T. Stancil

Mark T. Stancil (admitted *pro hac vice*)
Joshua S. Levy (admitted *pro hac vice*)
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000
mstancil@willkie.com
jlevy@willkie.com

-and-

REED SMITH LLP

Omar J. Alaniz
Texas Bar No. 24040402
Lindsey L. Robin
Texas Bar No. 24091422
2850 N. Harwood St., Ste. 1500
Dallas, Texas 75201
(469) 680-4292

Counsel for James P. Seery, Jr.